

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**IN RE: ASBESTOS PRODUCTS
LIABILITY LITIGATION**

MDL DOCKET NO. 875

**ROBERT D. BELUE, et al., vs.
A.O. SMITH ELECTRICAL
PRODUCTS COMPANY, et al.**

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

ROBERT D. BELUE, et al.,

Plaintiffs,

vs.

CIVIL ACTION NO.
2:06CV1034-WKW

ASBESTOS DEFENDANTS:
A. O. SMITH ELECTRICAL PRODUCTS
COMPANY, a division of A.O. SMITH
CORPORATION, et al.,

Defendants.

_____ /

DEFENDANT ARVINMERITOR'S MOTION TO DISMISS

COMES NOW Defendant ArvinMeritor, Inc. and, pursuant to Fed. R. Civ. P. Rule 12(b)(4) and Rule 12(b)(5), moves the Court to dismiss this case, and all claims asserted by plaintiffs, separately and severally, against it.

The grounds for this motion are as follows:

1. The Complaint in this case was filed on November 17, 2006.
2. On January 22, 2008, the plaintiffs served Defendant ArvinMeritor, Inc. At the time, 431 days had elapsed since the Complaint was filed.

3. Plaintiffs failed to serve ArvinMeritor, Inc. within 120 days of the filing of the Complaint as required by Fed. R. Civ. P. Rule 4(m). Accordingly, under Rule 4(m), this action should be dismissed without prejudice against ArvinMeritor, Inc.

4. ArvinMeritor, Inc. further continues to reserve all defenses it may have in this case.

WHEREFORE, Defendant Arvinmeritor, Inc., respectfully moves for this Court to dismiss this action against this Defendant and tax costs against Plaintiffs.

Respectfully submitted this 26th day of February, 2008.

HAWKINS & PARNELL, LLP

/s/ Elizabeth B. Padgett

Evelyn M. Fletcher

AL Bar No. ASB-1485-C19E

Elizabeth B. Padgett

Alabama Bar No. ASB-8936-C60P

Counsel for ArvinMeritor, Inc.

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303 Peachtree Street, N.E.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served the foregoing pleading with the CM/ECF system. I also certify that a copy of the foregoing has been furnished to Plaintiffs' counsel, G. Patterson Keahey, Jr., Esq., at the following address by U. S. Mail, with proper postage affixed:

G. Patterson Keahey, Jr., Esq.
G. PATTERSON KEAHEY, P.C.
Suite 612
One Independence Plaza
Birmingham, AL 35209.

This 26th day of February, 2008.

HAWKINS & PARNELL, LLP

/s/ Elizabeth B. Padgett

Evelyn M. Fletcher

AL Bar No. ASB-1485-C19E

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